



1975

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Recommended Citation

Smith, Thomas O. (1975) "North Dakota Auto Accident Reparations Act - North Dakota's No-Fault Insurance Law," *North Dakota Law Review*: Vol. 52 : No. 1 , Article 7.
Available at: <https://commons.und.edu/ndlr/vol52/iss1/7>

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"NORTH DAKOTA AUTO ACCIDENT REPARATIONS ACT" — NORTH DAKOTA'S NO-FAULT INSURANCE LAW

THOMAS O. SMITH*

I. INTRODUCTION

The debate on whether North Dakota will have no-fault insurance is over. The "North Dakota Auto Accident Reparations Act,"¹ the state's no-fault insurance law, will take effect on the first of January 1976.² In its passage through the legislature this past session, the no-fault insurance bill received much publicity. In spite of all the press coverage, however, many questions persist. How does the no-fault law work? What is the lawyer's role under the new law? Will the careful driver have to pay higher rates in order to subsidize the careless driver? Is there any place for litigation? These are just a few of the questions which have been raised.

This article will attempt to analyze and explain North Dakota's no-fault insurance law. It will not explore the constitutional issues involved with no-fault insurance. It is sufficient here to state that seven state supreme courts have considered the issue of limiting the right of a person injured in a motor vehicle accident to sue in tort and in each of these cases the court has upheld such limitations as constitutional under both federal and state constitutions.³

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1. Ch. 265, [1975] Laws of N.D. 796, *codified at* N.D. CENT. CODE Ch. 26-41 (Interim Supp. 1975).

2. Ch. 265 § 24, [1975] Laws of N.D. 810.

3. See *Gentile v. Altermatt*, —Conn.—, —A.2d— (1975); *Lasky v. State Farm*, 296 So. 2d 9 (Fla. 1974); *Kluger v. White*, 281 So. 2d 1 (Fla. 1973); *Grace v. Howlett*, 51 Ill. 2d 478, 283 N.E.2d 474 (1972); *Manzanados v. Bell*, 214 Kan. 589, 522 P.2d 1291 (1974); *Fann v. McGuffey*, —Ky.—, —S.W.2d— (1975); *Cyr v. Farias*, —Mass.—, 327 N.E.2d 890 (1975); *Chipman v. Mass. Bay Transp. Auth.*, —Mass.—, 316 N.E.2d 725 (1974); *Penneck v. Cleary*, 360 Mass. 1, 271 N.E.2d 592 (1971); *Shauers v. Kelly*, Civil No. 73-248-068-CZ (Cir. Ct., Mich., filed May 20, 1974); *In Re Requests of the Governor and the Senate on the Constitutionality of Act No. 294 of the Public Acts of 1972*, 389 Mich. 441, 208 N.W.2d 469 (1973); *Opinion of the Justices*, 113 N.H. 205, 304 A.2d 881 (1973) (New Hampshire never enacted their no-fault bill); *Montgomery v. Daniels*, 367 N.Y.S.2d 419 (Sup. Ct. Kings County 1975); *Singer v. Shepard*, —Penn.—, —A.2d— (1975).

II. COMPULSORY MOTOR VEHICLE INSURANCE

North Dakota's no-fault insurance law will require the "owner"⁴ of a motor vehicle to have insurance coverage for the payment of basic no-fault benefits and liabilities covered under motor vehicle liability insurance.⁵ The term "motor vehicle" is defined in the act to include those vehicles

having more than three load bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.⁶

Motor scooters, motorcycles, golf carts, snowmobiles, and tractors are exempt from the compulsory insurance requirements since they either do not have "more than three load bearing wheels," or they are not "designed primarily for operation upon the public streets, roads, and highways." Each motor vehicle to which the law applies must have a minimum coverage for bodily injury liability of ten thousand dollars per person in any one accident with an overall limit of twenty thousand dollars for bodily injury or death to two or more persons in any one accident, and five thousand dollars for property damage liability.⁷ Each motor vehicle must also have uninsured motorist protection of ten thousand dollars per person and twenty thousand dollars per accident,⁸ and fifteen thousand dollars per person per accident of basic no-fault benefits.⁹ Insurance requirements in the act are phrased in terms of "security"¹⁰—the owner of a motor vehicle is required to have all of the aforementioned coverages through either a motor vehicle insurance policy issued by an insurance company, or through an approved plan of self-insurance.¹¹

Those who presently have motor vehicle insurance will not be required to do anything. Prior to January 1, 1976, insurance companies will notify customers of the changes in North Dakota's motor vehicle insurance laws and will modify policies to include the cov-

4. N.D. CENT. CODE § 26-41-03(12) (Interim Supp. 1975) provides:

"Owner" means . . . the person in whose name the motor vehicle has been registered. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person who holds the legal title thereto, or in the event the motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, "owner" means the debtor or lessee.

5. N.D. CENT. CODE § 26-41-11(1) (Interim Supp. 1975); § 39-16.1-11 (1972).

6. N.D. CENT. CODE § 26-41-03(8) (Interim Supp. 1975).

7. N.D. CENT. CODE § 39-16.1-11 (1972).

8. N.D. CENT. CODE § 26-02-42 (Supp. 1973).

9. N.D. CENT. CODE §§ 26-41-04(1), 26-41-03(2) (Interim Supp. 1975).

10. N.D. CENT. CODE § 26-41-04 (Interim Supp. 1975)

11. N.D. CENT. CODE § 26-41-04(2) (Interim Supp. 1975).

erage required under the 1975 act. Those who do not maintain insurance on their motor vehicles must purchase it, or qualify as a self-insurer, in order to comply with the no-fault law. Since the new no-fault insurance law is compulsory, it contains procedures for enforcement which are tied to motor vehicle registration. Under the act, the motor vehicle registrar is directed to either refuse to register,¹² or rescind the registration of,¹³ a motor vehicle when the owner fails to provide the required security. In addition, the motor vehicle registrar is given the authority to supervise enforcement of the compulsory security requirements of the law.¹⁴ He can promulgate whatever rules and regulations he deems necessary to insure compliance with the law.¹⁵ For example, he may run random samples of title registrations to determine whether or not owners are maintaining insurance on their motor vehicles. In addition, after January 1, 1976, when residents apply for motor vehicle title registration or a renewal registration, they will have to certify that they have the security required under the act. In almost all cases they will simply certify that they have the required insurance coverage, the name of their insurance company, and the policy number. In addition to the enforcement authority granted to the motor vehicle registrar, the act has another provision which should aid in its enforcement. If a driver fails to have the required security at the time of an accident, he will be absolutely liable at law for payment of basic no-fault benefits¹⁶ to any person injured while a passenger in his motor vehicle, or struck by it as a pedestrian.

III. NO-FAULT BENEFITS—FIRST PARTY COVERAGE

The concept of no-fault insurance should not mystify anyone. Simply stated, after January 1, 1976, when a person sustains bodily injuries in a motor vehicle accident he will recover from the insurance on the motor vehicle in which he was injured, without regard to questions of fault or negligence. One point which cannot be over-emphasized is that North Dakota's no-fault insurance law does not provide for no-fault property damage. It applies to bodily injuries only.¹⁷

North Dakota's no-fault insurance law provides compensation for "economic loss"¹⁸ due to injuries sustained in motor vehicle accidents. "Economic loss" is defined as "medical expenses"¹⁹ and

12. N.D. CENT. CODE § 39-04-05(7) (Interim Supp. 1975).

13. N.D. CENT. CODE §§ 39-04-06(4), 26-41-04(4) (Interim Supp. 1975).

14. N.D. CENT. CODE § 26-41-04(7) (Interim Supp. 1975).

15. *Id.*

16. N.D. CENT. CODE § 26-41-04(5) (Interim Supp. 1975).

17. N.D. CENT. CODE § 26-41-03(2) (Interim Supp. 1975).

18. N.D. CENT. CODE § 26-41-03(5) (Interim Supp. 1975).

19. N.D. CENT. CODE § 26-41-03(7) (Interim Supp. 1975) provides:

"rehabilitation expenses,"²⁰ "work loss,"²¹ "replacement services loss,"²² "survivors income loss,"²³ "survivors replacement services loss,"²⁴ and funeral, cremation, and burial expenses. The act requires payment for "economic loss" under two categories—basic no-fault benefits.²⁵ and optional excess no-fault benefits.²⁶

The owner of a motor vehicle is required to maintain insurance on his vehicle as defined above.²⁷ The basic no-fault benefits are one aspect of this compulsory insurance, along with motor vehicle liability insurance and uninsured motorist protection. The schedule of personal injury protection benefits encompassed in this basic no-fault benefit package include the following, up to an aggregate of fifteen thousand dollars per person in any one accident:

"Medical expenses" means reasonable charges incurred for necessary medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services for remedial treatment and care rendered in accordance with a recognized religious healing method. Medical expenses do not include that portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically needed.

20. N.D. CENT. CODE § 26-41-03(22) (Interim Supp. 1975) provides:
"Rehabilitation expense" means the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.
21. N.D. CENT. CODE § 26-41-03(21) (Interim Supp. 1975) provides:
"Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the period of his disability, would have performed had he not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work which he was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.
22. N.D. CENT. CODE § 26-41-03(15) (Interim Supp. 1975) provides:
"Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had he not been injured, not for income but for the benefit of himself or his household. Replacement services loss does not include any loss after the death of an injured person.
23. N.D. CENT. CODE § 26-41-03(19) (Interim Supp. 1975) provides:
"Survivors income loss" means loss sustained after an injured person's death by his dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work he would normally have performed had he not died.
24. N.D. CENT. CODE § 26-41-03(20) (Interim Supp. 1975) provides:
"Survivors replacement services loss" means expenses not to exceed fifteen dollars per day after the injured person's death by his dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the services he would have performed not for income but for the benefit of his household.
25. N.D. CENT. CODE § 26-41-03(2) (Interim Supp. 1975).
26. N.D. CENT. CODE § 26-41-06 (Interim Supp. 1975).
27. N.D. CENT. CODE §§ 26-41-04(1)(2), 26-41-03(2) (Interim Supp. 1975); § 26-02-42 (Supp. 1973); § 39-16.1-11 (1972).

1. medical²⁸ and rehabilitation expenses,²⁹ the only qualification is that expenses for a hospital room are limited to the charge for a semiprivate hospital room unless intensive care is needed;

2. eighty-five percent of the income an injured person would normally earn during the period of his disability, up to a maximum of one hundred fifty dollars per week for an injured person;³⁰

3. up to one hundred fifty dollars per week for loss of income to the survivors of an injured person;³¹

4. up to fifteen dollars per day for replacement services to the injured person;³²

5. up to fifteen dollars per day for replacement services to the survivors of the injured person;³³ and

6. one thousand dollars for funeral, cremation, and burial expenses.³⁴

The law requires that these basic no-fault benefits be paid to the injured party in a motor vehicle accident without regard to fault or negligence. Such benefits cannot be reduced by deductibles or waiting periods—they are to be paid from dollar one for an injured party's economic loss subject only to the aggregate limitation of fifteen thousand dollars and the sublimits which apply to the various elements of economic loss noted above.

In addition to basic no-fault benefits, North Dakota's no-fault insurance law provides for optional excess no-fault benefits.³⁵ An insured is not required to purchase these additional benefits, but the act does require insurance companies to make available to their insureds optional excess no-fault benefits of up to twenty five thousand dollars, for a total of up to forty thousand dollars in no-fault benefits. The basic no-fault benefits will give an insured, if he wishes to purchase these additional benefits, the opportunity to have expanded coverage. The act provides that so long as the terms, conditions, and exclusions are consistent with the premiums charged, "optional excess no-fault benefits may be duplicative of benefits received from any collateral sources or may be written in excess of such collateral source benefits, or may provide for reasonable waiting periods, de-

28. N.D. CENT. CODE § 26-41-03(7) (Interim Supp. 1975).

29. N.D. CENT. CODE § 26-41-03(22) (Interim Supp. 1975).

30. N.D. CENT. CODE § 26-41-03(2), § 26-41-03(21) (Interim Supp. 1975).

31. N.D. CENT. CODE § 26-41-03(2), § 26-41-03(19) (Interim Supp. 1975).

32. N.D. CENT. CODE § 26-41-03(15) (Interim Supp. 1975).

33. N.D. CENT. CODE § 26-41-03(20) (Interim Supp. 1975).

34. N.D. CENT. CODE § 26-41-03(2) (Interim Supp. 1975).

35. N.D. CENT. CODE § 26-41-06 (Interim Supp. 1975).

ductibles, or coinsurance provisions.”³⁶ With this understanding of the type of no-fault coverages required under North Dakota’s no-fault law, it is appropriate to examine how payment will be made to those injured in a motor vehicle accident.

IV. PAYMENT OF NO-FAULT BENEFITS

One of the main concerns of any injured person after a motor vehicle accident is the payment of the bills and expenses which accumulate because of that accident. Under North Dakota’s no-fault insurance law, payments of no-fault benefits are tied to the “secured motor vehicle”³⁷ and not the individual driver. In order to fully understand this concept, it is necessary to understand two separate provisions of the act: the first provision defines the circumstances under which an injured party is entitled to no-fault benefits;³⁸ the second provision establishes the priorities between applicable security, or when and under what circumstances an insurance company has the obligation to make payments to an injured party when there is more than one insurance policy in force.³⁹

Under North Dakota’s no-fault insurance law, an insurer has the obligation to pay no-fault benefits in three situations:⁴⁰ (1) where the owner of a secured motor vehicle or any “relative”⁴¹ of the owner is injured when his motor vehicle is involved in an accident; (2) when any other person occupying the secured motor vehicle is injured in an accident; and (3) when a pedestrian is struck by a secured motor vehicle.

In the first situation,⁴² an insurer is obligated to pay no-fault benefits for bodily injuries arising out of a motor vehicle accident to the owner of the motor vehicle which it insures or any of his relatives, under two circumstances. First, an insurer has the obligation to pay no-fault benefits to any insured or any of the insured’s relatives who is injured while occupying the insured motor vehicle or any other motor vehicle.⁴³ However, the obligation to pay no-fault benefits in the situation where an insured or a relative is occupying

36. *Id.*

37. N.D. CENT. CODE § 26-41-03(16) (Interim Supp. 1975) provides:

“Secured motor vehicle” means a motor vehicle with respect to which the security required by this chapter was in effect at the time of its involvement in the accident resulting in accidental bodily injury.

38. N.D. CENT. CODE § 26-41-07 (Interim Supp. 1975).

39. N.D. CENT. CODE § 26-41-10(2) (Interim Supp. 1975).

40. N.D. CENT. CODE § 26-41-07 (Interim Supp. 1975).

41. N.D. CENT. CODE § 26-41-03(14) (Interim Supp. 1975) provides:

“Relative” means any of the following residing in the same household as the owner: a person related to the owner by blood, marriage, or adoption, or a foster child. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

42. N.D. CENT. CODE § 26-41-07(1) (Interim Supp. 1975).

43. N.D. CENT. CODE § 26-41-07(1)(a) (Interim Supp. 1975).

a motor vehicle owned by some other person arises only when that motor vehicle is uninsured.⁴⁴ Secondly, an insurer has the obligation to pay no-fault benefits to a policy holder or to his relatives when he is injured as a "pedestrian"⁴⁵ after being struck by a motor vehicle which, by specific inclusion in the act, also includes being struck by a motorcycle.⁴⁶ Again, however, this obligation to pay no-fault benefits arises only when he or one or more of his relatives is struck as a pedestrian by a motor vehicle which is uninsured.⁴⁷

In the second situation,⁴⁸ the insurer has an obligation to pay no-fault benefits to other persons injured while occupying the insured motor vehicle. Even though such persons may have no-fault coverage under their own policy, and with their own insurer, they must recover their loss from the insurer of the motor vehicle in which they were situated at the time of injury.⁴⁹

In the third situation,⁵⁰ the insurer has the obligation to pay no-fault benefits to any pedestrian who is struck and injured by the insured's motor vehicle.⁵¹ Again, the only time a pedestrian would recover from his own insurer is when he is struck by a motor vehicle which is uninsured.⁵²

It should be noted at this point that the payment of no-fault benefits is not limited to persons injured within the boundaries of North Dakota. In almost all situations a person injured in a motor vehicle which is covered by no-fault insurance, or a person who is covered by no-fault insurance under his own policy, will receive payment of no-fault benefits when the motor vehicle accident occurs within the "United States of America, its territories or possessions, or Canada."⁵³ There is one exception to this general proposition.⁵⁴ Only a pedestrian struck in North Dakota by an insured North Dakota motor vehicle will receive no-fault benefits from the insurer of that motor vehicle.⁵⁵ For example, if a motor vehicle insured under the North Dakota no-fault insurance law is being oper-

44. N.D. CENT. CODE § 26-41-10(2)(b) (Interim Supp. 1975).

45. N.D. CENT. CODE § 26-41-03(13) (Interim Supp. 1975) provides:

"Pedestrian" means any person not occupying a motor vehicle designed to be driven or drawn by power other than muscular power.

Someone occupying a motorcycle would not be a "pedestrian" since it is driven by power while someone riding a bicycle would be considered a "pedestrian."

46. N.D. CENT. CODE § 26-41-07(1)(b) (Interim Supp. 1975).

47. N.D. CENT. CODE § 26-41-10(2)(b) (Interim Supp. 1975).

48. N.D. CENT. CODE § 26-41-07(2) (Interim Supp. 1975).

49. N.D. CENT. CODE § 26-41-10(2)(a) (Interim Supp. 1975).

50. N.D. CENT. CODE § 26-41-07(3) (Interim Supp. 1975).

51. N.D. CENT. CODE § 26-41-10(2)(a) (Interim Supp. 1975).

52. N.D. CENT. CODE § 26-41-10(2)(b) (Interim Supp. 1975). The term "motor vehicle" for purposes of this section includes motorcycles. N.D. CENT. CODE § 26-41-07(1)(b) (Interim Supp. 1975).

53. N.D. CENT. CODE § 26-41-07(1)(2) (Interim Supp. 1975).

54. N.D. CENT. CODE § 26-41-07(3) (Interim Supp. 1975).

55. *Id.*

ated in South Dakota, and strikes a pedestrian in that state, the insurer of that motor vehicle has no obligation to pay no-fault benefits to that pedestrian.

V. RIGHTS AND OBLIGATIONS OF INSURERS

The law also establishes rights for, and imposes certain obligations on, insurers who provide no-fault insurance. It is the primary obligation of the insurance company providing no-fault coverage to make payment for the economic loss, as defined in the act, sustained in an insured motor vehicle accident. The insurance company may reduce no-fault benefits only to the extent that an insured victim has recovered for his injuries or is entitled "to recover for the same elements of loss under any workmen's compensation act. . . ."⁵⁶ In other words, the insurance company may not coordinate no-fault benefits with benefits the victim receives or is entitled to receive under a hospitalization policy or an accident and sickness policy. If the victim has both types of coverage, he may recover duplicate benefits. However, the act does permit an insurance company or nonprofit service corporation other than an insurance company providing no-fault benefits to coordinate benefits paid under its hospitalization policies or accident and sickness policies with those paid under the no-fault act. The result is that such insurers would be obligated to cover economic loss only to the extent it exceeds an insured's no-fault benefits. Any insurance company offering this type of coverage must provide a reduction or savings in the premiums charged on these policies, and its plan to coordinate benefits must be approved by the Commissioner of Insurance.⁵⁷ Thus, in the future insurance companies which write hospitalization or accident and sickness insurance may coordinate benefits paid under these contracts with no-fault benefits received by the injured party.

In such cases, the insured will receive a reduction or savings in the premiums charged on those contracts. The act contains specific directives to insurers providing no-fault benefits pertaining to the payment of first-party, no-fault benefits to the insured. Insurers must act in good faith in order to be relieved of their liability.⁵⁸ They are required to make monthly payments for economic loss sustained by victims. Such payments may be made to the person entitled to the no-fault benefits, or to the person or organization rendering the services for which no-fault benefits are payable.⁵⁹ Also, in the event the accident victim dies from his injuries, no-fault benefits

56. N.D. CENT. CODE § 26-41-10(1) (Interim Supp. 1975).

57. N.D. CENT. CODE § 26-41-10(3) (Interim Supp. 1975).

58. N.D. CENT. CODE § 26-41-09(1) (Interim Supp. 1975).

59. *Id.*

may be paid directly to those entitled thereto without the necessity of appointing an executor or administrator.⁶⁰ No-fault benefits will be considered overdue if not paid within thirty days after the insurance company receives a claim supported by reasonable proof of the fact of the accident and the amount of the loss.⁶¹ The only exception to this is that claims may be accumulated for periods not exceeding one month, and no-fault benefits will not be considered overdue if paid within twenty days after the period of accumulation.⁶² If an insurer fails to make payment during the period in which it is required to make payment, the act assesses an interest penalty of eighteen percent per annum on any overdue amounts.⁶³

The legislature also established when no-fault benefits would not be payable by insurers.⁶⁴ No-fault benefits shall not be payable under the following circumstances:

1. when the victim was occupying a motor vehicle without the express or implied consent of the owner, or when the victim was not in lawful possession of the motor vehicle;⁶⁵
2. when the victim was occupying a motor vehicle which he owned and it was not insured for no-fault benefits;⁶⁶
3. when the victim was injured during a racing or speed contest, or while practicing or preparing for such a contest; ⁶⁷and
4. when the victim intentionally caused or attempted to cause injury to himself or another person.⁶⁸

One caveat should be mentioned in regard to these exclusions. Every motor vehicle liability insurance company doing business in the state of North Dakota must file with the Insurance Commissioner a form declaring that its motor vehicle liability policies issued in this state provide the "security"⁶⁹ required by the no-fault insurance law.⁷⁰ If an insurance company fails to file such a form, any victim who is uninsured as the result of an insurance company's failure to file the form will nevertheless be entitled to receive no-fault benefits.⁷¹

Every insurance company which provides no-fault benefits in this state must also provide in its policies for situations in which an accident occurs outside of North Dakota, but within the United

60. *Id.*

61. N.D. CENT. CODE § 26-41-09(2) (Interim Supp. 1975).

62. *Id.*

63. *Id.*

64. N.D. CENT. CODE § 26-41-08 (Interim Supp. 1975).

65. N.D. CENT. CODE § 26-41-08(1) (Interim Supp. 1975).

66. N.D. CENT. CODE § 26-41-08(2) (Interim Supp. 1975).

67. N.D. CENT. CODE § 26-41-08(3) (Interim Supp. 1975).

68. N.D. CENT. CODE § 26-41-08(4) (Interim Supp. 1975).

69. N.D. CENT. CODE §§ 26-41-04(1), (2); 26-41-03(2) (Interim Supp. 1975); § 26-02-42 (Supp. 1973); § 39-16.1-11 (1972).

70. N.D. CENT. CODE § 26-41-05(2) (Interim Supp. 1975).

71. N.D. CENT. CODE §§ 26-41-08(2); 26-41-04(6) (Interim Supp. 1975).

States, its territories or possessions, or Canada. In such a situation, if the jurisdiction in which the accident occurs affords higher limits under its financial responsibility or compulsory insurance law and/or its no-fault insurance law than does the North Dakota act, then the insurer which issued the policy covering the North Dakota motor vehicle must provide the higher limits of coverage when that motor vehicle is operated and involved in an accident in that jurisdiction.⁷² For example, if the owner of a motor vehicle insured under the North Dakota act is insured to the basic limits of coverage as required by the act (i.e. \$15,000 basic no-fault benefits, \$10,000/\$20,000/\$5,000 liability coverage, \$10,000/\$20,000 uninsured motorist coverage)⁷³ and operates that vehicle in a state in which limits of twenty thousand dollars in no-fault benefits, fifteen thousand, thirty thousand and ten thousand dollars for liability coverage, and fifteen thousand and thirty thousand for uninsured motorist coverage are in effect, he will receive the higher limits of coverage while he operates the vehicle in that state. If the limits of coverage afforded under the North Dakota act are higher than the limits of coverage of the state in which the motor vehicle is operated, then the limits of coverage will be those provided under the North Dakota law.

Finally, insurance companies providing no-fault benefits have certain discovery procedures available to them in investigating claims made for no-fault benefits. A company may require a claimant to submit to mental and physical examinations when such examinations are material to the claim submitted.⁷⁴ Upon written request, an insurance company may request that either claimant or his employer complete loss of earning forms;⁷⁵ or that physicians, coroners, medical officers, hospitals, or clinics produce such medical information and reports as may be necessary to process a claim.⁷⁶

VI. LIMITATION OF RIGHT TO SUE—THE THRESHOLD

The single aspect of no-fault laws which has received the greatest amount of attention and opposition is the limitation on the right of a victim to sue when injured in a motor vehicle accident. This limitation establishes the "threshold" of conditions or circumstances which must be fulfilled before any victim may sue. Under the North Dakota no-fault law, this limitation on the right to sue is called the "secured person exemption."⁷⁷ A "secured person" is defined as

72. N.D. CENT. CODE § 26-41-11(2) (Interim Supp. 1975).

73. N.D. CENT. CODE §§ 26-41-04(1), (2); 26-41-03(2) (Interim Supp. 1975); § 26-02-42 (Interim Supp. 1973); § 39-16.1-11 (1972).

74. N.D. CENT. CODE § 26-41-17 (Interim Supp. 1975).

75. N.D. CENT. CODE § 26-41-18(1) (Interim Supp. 1975).

76. N.D. CENT. CODE § 26-41-18(2) (Interim Supp. 1975).

77. N.D. CENT. CODE § 26-41-12 (Interim Supp. 1975).

"the owner, operator or occupant of the secured motor vehicle, and any other person or organization legally responsible for the acts or omissions of such owner, operator or occupant."⁷⁸ The "secured person exemption" provides that such persons are free from liability to pay damages in two situations.

In the first situation,⁷⁹ a "secured person" is exempt from liability to pay damages for "non-economic loss"⁸⁰ unless the victim has sustained a "serious injury."⁸¹ A "serious injury" is defined as "an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of one thousand dollars."⁸² In other words, if injured in a motor vehicle accident, the victim cannot sue a "secured person" for pain and suffering unless he has sustained a "serious injury" as defined under the act. This does not mean there can never be a suit for pain and suffering unless a "serious injury" is sustained. For example, A, who is uninsured, runs into B, and B is injured. Although B does not sustain a "serious injury,"⁸³ he may sue A for pain and suffering since A is not a "secured person."⁸⁴ But if B is insured and he runs into A, A cannot sue B for pain and suffering unless he sustains a "serious injury", since B is a "secured person" as defined in the act.

It is difficult to foresee how the North Dakota courts will construe the "secured person exemption" when an injured party sues a "secured person" for pain and suffering. The exemption appears to be jurisdictional in nature, but the law is silent as to how the determination is to be made as to whether or not an injured party has attained the "threshold," so that he may sue for pain and suffering. It appears to be a matter left to the sound discretion of the courts.

One aspect of the "threshold" provision which a court will specifically have to determine arises in the situation where an injured party is furnished medical services without charge or at less-than-the-average reasonable charge. The court is authorized under such circumstances to determine that the victim has sustained a "serious injury" if it finds that the fair and reasonable value of the services rendered as a result of an accident exceeds one thousand dollars.⁸⁵ For example, let us assume that an airman stationed at the Grand Forks Air Force Base is injured in a motor vehicle accident and

78. N.D. CENT. CODE § 26-41-03(17) (Interim Supp. 1975).

79. N.D. CENT. CODE § 26-41-12(1) (a) (Interim Supp. 1975).

80. N.D. CENT. CODE § 26-41-03(9) (Interim Supp. 1975) provides: "'Noneconomic loss' means pain, suffering, inconvenience, and other nonpecuniary damage recoverable under the tort law of this state."

81. N.D. CENT. CODE § 26-41-03(18) (Interim Supp. 1975).

82. *Id.*

83. *Id.*

84. N.D. CENT. CODE § 26-41-03(17) (Interim Supp. 1975).

85. N.D. CENT. CODE § 26-41-03(18) (Interim Supp. 1975).

rushed to the base hospital. The base hospital places a value on the services rendered to him as the result of his injuries at eight hundred dollars. Normally, he would not have attained the "threshold" which would allow suit for pain and suffering, since his medical expenses do not exceed one thousand dollars. However, a court can examine the type of services performed and make a determination that he has attained the "threshold" limit if it finds that the fair and reasonable value of the services rendered to the victim would exceed one thousand dollars if performed by any other hospital in North Dakota.

In the second situation,⁸⁶ a "secured person" is exempt from liability to pay damages for "economic loss"⁸⁷ to the extent that an injured person has been paid or will be paid basic no-fault benefits. This means that recovery cannot be had from a "secured person" in a tort action for any "economic loss" which has been recovered or will be recovered in the future from an insurance company. This eliminates the possibility of an injured person recovering basic no-fault benefits for his "economic loss" from his insurance company and also recovering the same element of "economic loss" from the secured person's insurance company under the motor vehicle liability insurance coverage. Thus, a court in order to comply with the spirit of the law should consider in any suit for damages evidence of basic no-fault benefits which have been paid or will be paid in the future to an injured person(s) and reduce any judgment rendered in his favor by that amount.

This limitation on recovering "economic loss" applies only to the extent that the insured has been, or will be, compensated by basic no-fault benefits. For example, if a person incurs a wage loss of three hundred dollars per week, he would receive the maximum basic no-fault benefit of one hundred and fifty dollars per week from his insurance company. This would leave him with a loss of one hundred and fifty dollars per week which was not compensated under the law, and he would have the right to sue the "secured person" for this loss. In addition, his right to sue for "economic loss" not compensated under the no-fault insurance law is in no way affected by the fact that he has not sustained a "serious injury." Thus, if he has sustained two hundred dollars in medical expenses and has not sustained any other injuries which would enable him to sue for pain and suffering, he may still sue for the "economic loss" he suffered as a result of the accident which was not compensated under the no-fault insurance law. The right to sue for pain and suffering and the right to sue for

86. N.D. CENT. CODE § 26-41-12(1)(b) (Interim Supp. 1975).

87. N.D. CENT. CODE § 26-41-03(5), (7), (15), (19), (20), (21), (22) (Interim Supp. 1975).

"economic loss" not compensated under North Dakota's no-fault law exist independently of one another.

As noted above, basic benefits paid by a no-fault insurer are the injured person's primary source of recovery except to the extent that he recovers, or is entitled to recover, for the same elements of loss under any workmen's compensation act.⁸⁸ To be consistent with this concept, the "secured person" under the "secured person exemption" is exempt from liability for payments made for "economic loss" when the injured party receives those payments under any workmen's compensation act.⁸⁹ However, any payments made to an insured under a workmen's compensation plan may be recovered from a responsible third party, if that third party is legally liable, without hinderance from the "secured person exemption" under the North Dakota no-fault insurance law. Thus, the North Dakota Workmen's Compensation Fund would have the right of subrogation against a person legally liable to pay damages for payments made by the Fund under the Workmen's Compensation Act.⁹⁰

The no-fault insurance law specifies the circumstances in which the "secured person exemption" does or does not apply.⁹¹ The "secured person exemption" applies only when the injured person may qualify for basic no-fault benefits under the act.⁹² The "secured person exemption" does not apply, for example, when a "secured person" runs into a motorcycle. Since North Dakota's no-fault insurance law generally excludes motorcycles from its purview, neither the driver nor any passenger on the motorcycle would be qualified to receive basic no-fault benefits.⁹³ They would not be excluded from receiving no-fault benefits as a result of their conduct. Therefore, the driver of, or any passenger on, the motorcycle would be entitled to sue the "secured person" for pain and suffering and any economic loss incurred in the accident free from any limitation imposed by the "secured person exemption."

VII. SUBROGATION AND EQUITABLE ALLOCATION OF LOSS

When the theory of no-fault insurance is presented (that payment is made to an injured person without regard to fault), there is often a concern that the good, responsible motor vehicle operator will have to pay higher insurance premiums in order to subsidize those motor vehicle drivers who are less responsible. This in fact is not the case

88. N.D. CENT. CODE § 26-41-10(1) (Interim Supp. 1975).

89. N.D. CENT. CODE § 26-41-12(1)(b) (Interim Supp. 1975).

90. See N.D. CENT. CODE § 65-01-09 (Supp. 1973).

91. N.D. CENT. CODE § 26-41-12(2) (Interim Supp. 1975).

92. N.D. CENT. CODE § 26-41-07 (Interim Supp. 1975).

93. N.D. CENT. CODE § 26-41-07 (Interim Supp. 1975); see N.D. CENT. CODE § 26-41-08(1)-(4) (Interim Supp. 1975).

under the North Dakota no-fault insurance law. There are two provisions of the act which allow a good responsible driver to obtain insurance at the best rate possible and impose the higher insurance premiums on the less responsible driver.

First of all, an insurance company providing basic no-fault benefits in this state which has paid—or may become obligated to pay—such benefits, has a right of subrogation to the extent of its obligations, to all the rights of the injured person against any person or organization legally responsible for the accident, other than a secured person.⁹⁴ In other words, an insurance company has a right of subrogation against all persons who are uninsured, or who are not insured under a basic no-fault benefits policy. The responsible person under those circumstances is not a “secured person” under the act, and thus the “secured person exemption” (the limitation on the right to sue) would have no application. The injured person would have an unimpaired right to sue in tort for damages, and the insurance company providing basic no-fault benefits to him would have a right to reimbursement from the proceeds recovered to the extent that it had paid or was obligated to pay basic no-fault benefits. Thus, the insurance company could recover the benefits it paid.

This appears to resolve the problem that arises when injuries are sustained as a result of the negligence of a “secured person.” An insurer cannot subrogate against a “secured person.”⁹⁵ In this situation, statutory provisions pertaining to the equitable allocation of loss among insurers come into play.⁹⁶

If a person sustains a serious injury,⁹⁷ or the injury results from an accident involving two or more motor vehicles when one of the vehicles weighs more than six thousand five hundred pounds unloaded,⁹⁸ the insurance company providing no-fault benefits may recover such benefits paid to the injured party, or on his behalf, from the motor vehicle liability insurer of the “secured person.” The right and amount of recovery is determined on the basis of tort law, without

94. N.D. CENT. CODE § 26-41-13 (Interim Supp. 1975).

95. *Id.*

96. N.D. CENT. CODE § 26-41-14 (Interim Supp. 1975).

97. N.D. CENT. CODE § 26-41-14(1) (Interim Supp. 1975). The equitable allocation of loss among insurers is allowed when a person has sustained a serious injury. Serious injury is defined as death, dismemberment, serious and permanent disfigurement or disability beyond sixty days or medical expenses in excess of one thousand dollars. N.D. CENT. CODE § 26-41-03(18) (Interim Supp. 1975). Once the injured person has sustained serious injury, the insurer may allocate the loss beginning with the first dollars and not just the amount in excess of one thousand dollars.

98. N.D. CENT. CODE § 26-41-14(2) (Interim Supp. 1975). This provision was enacted to take care of the car-truck collisions. According to statistics, in accidents involving collisions between cars and trucks, the insurer of the truck has paid in almost ninety percent of the cases. The equitable allocation of loss is made in this situation regardless of whether or not there is a serious injury. Thus companies insuring trucks under the no-fault insurance law will receive no greater benefit than they received prior to its enactment.

regard to the "secured person exemption,"⁹⁹ either through agreement entered into by the insurers involved, or by binding inter-company arbitration under procedures approved by the Commissioner of Insurance. An insurer will not have to pay an amount greater than the limits of liability under its insured's motor vehicle liability policy.¹⁰⁰ For example, if fifteen thousand dollars are received by an injured party in basic no-fault benefits and the "secured person" has the basic coverage provided for under the act,¹⁰¹ the maximum amount an insurance company providing basic no-fault benefits to a victim could recover from the motor vehicle liability insurer of the secured person would be ten thousand dollars. In addition, if a victim received fifteen thousand dollars in basic no-fault benefits and had other damages in excess of ten thousand dollars, the motor vehicle liability insurer of the "secured person" could pay ten thousand dollars directly to the victim for those damages, which would result in the insurance company which provided basic no-fault benefits to the victim receiving nothing under this provision.¹⁰² The right of an insurance company providing basic no-fault benefits to a victim to seek reimbursement from the motor vehicle liability insurer of a "secured person" is subservient to any tort claim the victim may have against the "secured person" under his motor vehicle liability insurance policy.¹⁰³

Under North Dakota's no-fault law, proper provision is made for a maximum payment of benefits to injured persons and for a determination as to fault which can be reflected in rates charged to North Dakota insureds under the law.¹⁰⁴

VIII. ASSIGNED CLAIMS PLAN

North Dakota's no-fault insurance law requires all insurance companies and self-insurers providing no-fault benefits to organize, participate in, and maintain an assigned claims plan.¹⁰⁵ The purpose of the plan is to provide a means whereby: (1) any person injured in a motor vehicle accident who through such plan suffers "economic loss" may obtain basic no-fault benefits if such no-fault benefits are not applicable to the injury for some reason other than that the injured person is excluded from receiving no-fault benefits as the result of his conduct;¹⁰⁶ or (2) if basic no-fault benefits applicable to the in-

99. N.D. CENT. CODE § 26-41-12 (Interim Supp. 1975).

100. N.D. CENT. CODE § 26-41-14 (Interim Supp. 1975).

101. See N.D. CENT. CODE §§ 26-41-04(1), (2); 26-41-03(2) (Interim Supp. 1975); § 26-02-42 (Supp. 1975); § 39-16.1-11 (1972).

102. N.D. CENT. CODE § 26-41-14 (Interim Supp. 1975).

103. *Id.*

104. N.D. CENT. CODE §§ 26-41-13; 26-41-14 (Interim Supp. 1975).

105. N.D. CENT. CODE § 26-41-19(1) (Interim Supp. 1975).

106. N.D. CENT. CODE § 26-41-19(1)(a) (Interim Supp. 1975).

jury are inadequate due to the financial inability of the insurer providing no-fault benefits to fulfill its obligations to the injured person.¹⁰⁷ This latter situation deserves further explanation.

Numerous states have enacted legislation to insure the payment of claims involving insolvent insurers similar to the North Dakota Insurance Guaranty Association Act.¹⁰⁸ Under North Dakota's no-fault insurance law, any claim paid under an assigned claims plan constitutes a "covered claim"¹⁰⁹ under the Insurance Guaranty Association Act. That Act applies to every kind of direct insurance except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.¹¹⁰ Every insurer authorized to do business in this state is assessed a proportionate share of the cost of paying such claims on the basis of the business it writes in North Dakota.¹¹¹

In the first situation, where the injured person may make a claim to the assigned claims plan when basic no-fault benefits are not applicable to the injury for any reason other than as a result of that person's conduct,¹¹² the concept can best be explained by way of example. If a person who is a "career pedestrian" (someone who does not own a motor vehicle, and does not qualify for no-fault benefits under a relative's policy) is struck and injured by an uninsured motor vehicle while crossing the street, there would be no basic no-fault benefits available for his injuries. In such a case, he could make a claim to the assigned claims plan and receive payment of basic no-fault benefits for whatever "economic loss" he incurred. This is just one example and should not be considered as being exclusive. The assigned claims plan provision is written in general language so that the facts and circumstances surrounding each situation must be examined in order to determine whether or not its basic no-fault benefits are applicable to a particular injury, and whether the injured person may not be entitled to receive basic no-fault benefits by reason of his conduct.¹¹³

The no-fault insurance law does not leave those insurers to whom a claim is assigned under the plan without redress. Under the act,

107. N.D. CENT. CODE § 26-41-19(1)(b) (Interim Supp. 1975).

108. N.D. CENT. CODE ch. 26-36 (Supp. 1973).

109. N.D. CENT. CODE § 26-41-19(1)(b) (Interim Supp. 1975). In N.D. CENT. CODE § 26-36-05(3) (Supp. 1973) provides:

"Covered claim" means an unpaid claim, including one for unearned premiums, within the coverage of an insurance policy to which this chapter applies issued by an insurer if such insurer becomes insolvent after the effective date of this chapter. The claimant or insured must be a resident of this state at the time of the insured event or the insured property must be permanently located in this state. Covered claim shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

110. N.D. CENT. CODE § 26-36-03 (Supp. 1973).

111. N.D. CENT. CODE § 26-36-02 (Supp. 1973).

112. N.D. CENT. CODE § 26-41-08 (Interim Supp. 1975).

113. N.D. CENT. CODE § 26-41-19(1)(b) (Interim Supp. 1975).

they are subrogated to all the rights of the person injured against any person liable,¹¹⁴ and have all the rights and obligations they would have had if prior to the assignment they had issued an insurance policy providing basic no-fault benefits applicable to the loss.¹¹⁵ In addition, an insurer to whom a claim has been assigned is not required to bear the entire cost of such a claim since the law provides for the equitable distribution of costs among all insurers licensed as no-fault insurers in the state.¹¹⁶

IX. LIMITATIONS OF ACTIONS

The North Dakota no-fault insurance law establishes a limitation on actions in regard to basic and optional excess benefits,¹¹⁷ and specifies that such statutory limitation is to prevail notwithstanding any limitation prescribed elsewhere in the laws of the state of North Dakota.¹¹⁸ This provision imposes a limitation on the commencement of an action by an injured person after either payment or nonpayment of basic or optional excess no-fault benefits,¹¹⁹ and a limitation pertaining to the commencement of an action by either the dependent survivor or another claimant after either payment or nonpayment of survivors income loss, replacement services loss, or funeral and burial expenses.¹²⁰

If a claimant has not received payment of any no-fault benefits, he must commence an action to recover such benefits not later than two years after he becomes aware that the injury was caused by a motor vehicle accident, or not later than four years after the accident, whichever is earlier.¹²¹ If a claimant has received payment of no-fault benefits, any action for the recovery of further benefits must be commenced not later than two years after he received his last benefit payment.¹²²

If no-fault benefits have not been paid to an injured person who later dies, or to his dependent survivors, any action for the recovery of survivors income loss, replacement services loss, or funeral and burial expenses must be commenced not later than one year after the death of the injured person or four years after the accident from which death results, whichever is earlier.¹²³ However, if payment was made for survivors income loss or replacement services loss to the dependent survivors of the injured person, an action for the recovery

114. N.D. CENT. CODE § 26-41-19(2) (Interim Supp. 1975).

115. N.D. CENT. CODE § 26-41-19(3) (Interim Supp. 1975).

116. *Id.*

117. N.D. CENT. CODE § 26-41-16 (Interim Supp. 1975).

118. N.D. CENT. CODE § 26-41-16(4) (Interim Supp. 1975).

119. N.D. CENT. CODE § 26-41-16(1) (Interim Supp. 1975).

120. N.D. CENT. CODE § 26-41-16(2) (Interim Supp. 1975).

121. N.D. CENT. CODE § 26-41-16(1) (Interim Supp. 1975).

122. *Id.*

123. N.D. CENT. CODE § 26-41-16(2) (Interim Supp. 1975).

of any further benefits must be commenced within two years after the last payment of benefits.¹²⁴ When the injured person received no-fault benefits prior to his death, any action to recover survivors income loss or replacement services loss by his dependent survivors must be commenced within one year after the injured person's death or four years after the last payment of benefits, whichever is earlier.¹²⁵

A claimant who submits a claim under the assigned claims plan has the right to commence an action against the assignee insurance company claim.¹²⁶ Unless a longer period of time is specified,¹²⁷ the claimant, who may be an injured person, injured person's dependent survivor, or any other person entitled to make a claim, must commence an action for the recovery of no-fault benefits against the insurer to whom the claim was assigned not later than sixty days after the claimant receives written notice of rejection of the claim.¹²⁸ Since a person entitled to make a claim under the assigned claims plan for no-fault benefits might be unaware of the existence of his claim, there could be a considerable lapse of time before such a claim is submitted, and the handling of the claim may run beyond the period of time specified for the commencement of actions. Thus, the sixty day provision will give those claimants under the assigned claims plan at least some additional time in which to commence their actions if their claims are denied.

X. CONCLUSION

With the enactment of the North Dakota Auto Accident Reparations Act, a new frontier has been entered in North Dakota's automobile accident reparations system. In enacting the no-fault insurance law, there was an effort to keep it as simple as possible, but like all no-fault insurance laws, it is, by the very nature of the subject matter with which it deals, rather complex and difficult to understand. It must be studied very carefully with particular notice being taken of the definitions contained in the law. It is hoped that this article will give a better understanding of the operation of the law.

The North Dakota Auto Accident Reparations Act is certainly not the last word in no-fault insurance laws, but it should be considered a step in the right direction. Under the North Dakota Auto Accident Reparation Act, more premium dollars will compensate more people injured in motor vehicle accidents in North Dakota than ever before.

124. *Id.*

125. *Id.*

126. N.D. CENT. CODE § 26-41-16(3) (Interim Supp. 1975).

127. N.D. CENT. CODE § 26-41-03(1), (2) (Interim Supp. 1975) may provide for a longer period of time.

128. *Id.*